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Monday, May 7, 2018

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Monday, May 7, 2018

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

NATIONAL NURSING WEEK

Hon. Marilou McPhedran: Colleagues, I rise today to recognize across Canada, from coast to coast to coast, our nurses who work diligently and tirelessly. This week is a time of commemoration, celebration and appreciation, because it is the beginning of National Nursing Week.

[*Translation*]

I want to take this opportunity to thank our nurses who dedicate their lives to serving the public in their time of greatest need.

[*English*]

When I spoke to Bill C-211 in this chamber, I highlighted the importance of recognizing and extending protection to nurses as first responders, and that post-traumatic stress disorder is also, for nurses, a true, relevant and dangerous consequence of their meaningful work. Nurses need recognition for the lives they change. Nurses are at the forefront of our care systems, and are essential to well-balanced and efficient health care across the country.

In an Ontario Nurses Association press release a few days ago, President Vicki McKenna highlighted:

> This week we will celebrate our profession and our compassion, setting aside the challenges brought by RN cuts, heavy workloads, increasing workplace violence and other issues.

I also wish to bring to the attention of the chamber that nurses often lead in a way that is substantially different from what we see from mostly male-dominated professions. For example, we currently have in Ottawa a lot of attention being paid to a case that has recently broken open with more than 80 charges of sexual abuse and voyeurism, allegedly, against a doctor who practises here.

What nurses have said about what needs to be done is substantially different from what most of the other professionals have been saying. The Registered Nurses' Association of Ontario has indicated that it is time for greater independence, greater public accountability and that they need to take a patient-centric approach.

In closing, I'd like to thank the dedicated nurses and health care professionals who choose to work in difficult but critical environments that serve our entire society.

Please, let's remember our nurses. Let's thank them, let's recognize them for their work and let's acknowledge that they are important first responders on the front lines of health care. Thank you. *Meegwetch*.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Savannah Gentile, Kassandra Churcher and Sadie Ratt Churcher. They are the guests of the Honourable Senator Pate.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear!

ELIZABETH FRY WEEK

Hon. Kim Pate: Honourable senators, happy Mental Health Week and happy National Elizabeth Fry Week.

[*Translation*]

Every year, the Canadian Association of Elizabeth Fry Societies celebrates Elizabeth Fry week. Elizabeth Fry societies will organize public events across the country.

Elizabeth Fry week always falls on the week leading up to Mother's Day. The majority of women in prison are mothers, and most of them are single mothers at the time of incarceration.

[*English*]

When mothers are sentenced to imprisonment, they and their children are sentenced to separation, a condition that many women and any mother would consider to be the most severe punishment. The Canadian Association of Elizabeth Fry Societies aims to draw attention to this reality by ending National Elizabeth Fry Week on Mother's Day.

The overarching goal of the Canadian Association of Elizabeth Fry Societies, CAEFS, is to enhance public awareness, education and most important to remedy the circumstances of marginalized, victimized, criminalized and institutionalized women and girls. Current priorities include challenging the over-classification and segregation or solitary confinement of women, particularly Indigenous and other racialized women, and those with mental health issues. Additionally, CAEFS opposes the prison system's unwarranted and invasive uses of force, especially strip searches, as well as the consequent interference with safe and gradual release and community integration.

By focusing on "Meeting Women's Needs in the Community and Alternatives to Institutionalization," the 24 member societies encourage Canadians to proactively focus on addressing substantive inequality and justice matters from coast to coast to coast. They work to redress discriminatory attitudes and

contribute to the development of and support for community-based alternatives to incarceration, thereby alleviating human, social and fiscal costs.

CAEFS challenges Canadians to reach behind the walls and bring women into our communities so that they may take responsibility and account for their actions in ways that make sense to them and to us.

Honourable senators, I ask that you join me in congratulating CAEFS on the fine work they continue to do throughout the country. Happy National Elizabeth Fry Week to all. Thank you. *Meegwetch.*

ROUTINE PROCEEDINGS

EXPUNGEMENT OF HISTORICALLY UNJUST CONVICTIONS BILL

BILL TO AMEND—TENTH REPORT OF HUMAN RIGHTS COMMITTEE PRESENTED

Hon. Wanda Elaine Thomas Bernard, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Monday, May 7, 2018

The Standing Senate Committee on Human Rights has the honour to present its

TENTH REPORT

Your committee, to which was referred Bill C-66, An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts, has, in obedience to the order of reference of Tuesday, March 27, 2018, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

WANDA ELAINE THOMAS BERNARD
Chair

(*For text of observations, see today's* Journals of the Senate, *p. 3301.*)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Harder, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

[*Translation*]

THE SENATE

NOTICE OF MOTION TO EXTEND THIS WEDNESDAY'S SITTING AND AUTHORIZE COMMITTEES TO MEET DURING SITTING OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order adopted by the Senate on February 4, 2016, the Senate continue sitting on Wednesday, May 9, 2018, until the end of Government Business;

That committees of the Senate scheduled to meet on that day be authorized to meet after 4 p.m. even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto; and

That the provisions of rule 3-3(1) be suspended on that day.

• (1810)

[*English*]

ORDERS OF THE DAY

TRANSPORTATION MODERNIZATION BILL

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS—DEBATE ADJOURNED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts:

Thursday, May 3, 2018

ORDERED,—That a Message be sent to the Senate to acquaint their Honours that this House:

agrees with amendments 2, 7(a) and 10(b) made by the Senate;

respectfully disagrees with amendments 1(a)(i), 1(b), 5(a)(i), 5(b) because the issues raised by the amendments are addressed in the bill or by existing legislation;

respectfully disagrees with amendment 1(a)(ii) because this would affect the Minister's ability to issue a decision on an application for a joint venture within the timelines set forth in the bill;

respectfully disagrees with amendments 3 and 4 because the passenger rights will be established in regulation by the Canada Transportation Agency, as opposed to the airlines, and will automatically be incorporated into an airline tariff for the benefit of the passenger, and furthermore, Bill C-49 does not preclude third party advocates from filing complaints on the content of terms and conditions of tariffs they find unreasonable;

respectfully disagrees with amendment 5(a)(ii) because Bill C-49 mandates new regulations that would specify carriers' obligations or standards of treatment of passengers for any delays, including a tarmac delay, as well as specific obligations for tarmac delays of more than three hours;

respectfully disagrees with amendment 5(a)(iii) because further study and consultation with concerned parties, including the federal agencies responsible for official languages, the Official Languages Commissioner and the industry stakeholders are required to better understand the economic implications and competitiveness on the Canadian air sector;

proposes that amendment 6 be amended by replacing the text of subsection (1.01) and (1.1) with the following "(1.1) For the purpose of an investigation conducted under subsection (1), the Agency shall allow a company at least 20 days to file an answer and at least 10 days for a complainant to file a reply. (1.11) The Agency may, with the authorization of the Minister and subject to any terms and conditions that the Minister considers appropriate, of its own motion, conduct an investigation to determine whether a railway company is fulfilling its service obligations. The Agency shall conduct the investigation as expeditiously as possible and make its determination within 90 days after the investigation begins.";

proposes that amendment 7(b) be amended by replacing the text with the following text "in Canada that is in the reasonable direction of the shipper's traffic and its destination;";

in order to keep the intent of the Senate amendment 7(b), proposes to add the following amendment to Clause 95, subsection (5), page 64, by replacing line 8 with the following "km of an interchange in Canada that is in the reasonable direction of the shipper's traffic and its destination";

respectfully disagrees with amendment 7(c) because shippers in the Maritimes will continue to have access to other shipper remedies in the Act;

respectfully disagrees with amendment 8 because the final offer arbitration is not intended to be a cost-based remedy but rather a commercially-based process to settle a dispute during a negotiation of a confidential commercial contract;

proposes that amendment 9 be amended by replacing the text of the amendment with the following text "59.1 (1) Schedule II to the Act is amended by replacing "Bean (except soybean) derivatives (flour, protein, isolates, fibre)" with "Bean (including soybean) derivatives (flour, protein, isolates, fibre)". (2) Schedule II to the Act is amended by replacing "Beans (except soybeans), including faba beans, splits and screenings" with "Beans, including soybeans, faba beans, splits and screenings". (3) Schedule II to the Act is amended by adding, in alphabetical order, "Meal, soybean", "Meal, oil cake, soybean", "Oil, soybean" and "Oil cake, soybean".";

respectfully disagrees with amendment 10(a) because it would significantly impact the ability of railways to ensure the safety of railway operations.

Hon. Peter Harder (Government Representative in the Senate) moved:

That the Senate agree to House of Commons amendment 4, as well as House of Commons amendments 1, 2 and 3 made to its amendments 6, 7(b) and 9 to Bill C-49, An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts;

That the Senate do not insist on its amendments 1(a)(i), 1(a)(ii), 1(b), 3, 4, 5(a)(i), 5(a)(ii), 5(a)(iii), 5(b), 7(c), 8 and 10(a), to which the House of Commons has disagreed; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise to speak to the message on Bill C-49, the Transportation Modernization Act and to state why I hope this chamber will concur with the other place in the amendments it has accepted, three of them in modified versions.

First, let me thank the Senate for its significant contributions to this legislation. In particular, I would like to thank my colleague and friend Senator Mitchell, the sponsor of this bill. I would also like to thank the Standing Senate Committee on Transport and Communications for its diligent and thorough study of the bill and its thoughtful questions to over 70 witnesses during 23 hours of hearings.

I also wish to thank all stakeholders who appeared before the committee and sent written submissions that contributed to the study of the bill.

Bill C-49 is now a joint effort of both places. Parliamentarians on both sides have consulted, studied and improved this important piece of legislation on behalf of Canadians. This effort was recognized by the Agricultural Producers Association of Saskatchewan who issued the following statement last week:

> With C-49, we believe that the Minister, MPs and Senators have all paid attention, and worked hard to address long standing problems in grain transportation. We look forward to quick passage of this legislation to ensure that we can plan for moving the crop that we are seeding this spring.

The other place has accepted several amendments from the Senate and modified three. Noting the Senate's hard work on this bill, Minister Garneau explained these choices.

[*Translation*]

He said that the government agreed to a very important amendment for the industry that clarifies the definition of Canadian ownership. The amendment proposed by Senator Cormier clarifies restrictions on foreign ownership of Canadian air carriers by adding the terms "directly" and "indirectly."

The second amendment that the government agreed to has to do with the destruction of information from locomotive voice and video recorders. Senator MacDonald's amendment further clarifies the regulatory authority and provides important details about the destruction of information.

[*English*]

The government also supports, with some modifications, three other amendments.

The first is called "agency own motion," which will allow the Canadian Transportation Agency to be more proactive in addressing systemic issues. Shippers from across the country gave compelling testimony about the need for the agency to investigate systemic rail service issues without having to wait for a shipper to file a complaint. That is why the government is proposing to allow the agency an expanded ability to investigate rail services issues, subject to the authority of the Minister of Transport. This would achieve the goal of Senator Galvez's original amendment by giving the agency new powers while retaining the appropriate level of oversight and accountability by the government.

Another Senate amendment, proposed by Senator Griffin, has been accepted with modifications that expand it. It adds soybeans and soybean products to the list of agricultural products covered by the maximum revenue entitlement, which limits the revenue that railways can make on the transportation of certain goods in Western Canada. Crops such as wheat, lentils and peas already benefit from this amendment. Farmers, noting that soybeans have become an increasingly important crop in the Prairie provinces, requested that the MRE, maximum revenue entitlement, be extended.

A further Senate amendment accepted in the other place, with modification, concerns long-haul interswitching. LHI, as it is called, would provide captive shippers with access to an alternative carrier with the rate for the regulated movement of up to 1,200 kilometres being determined by the Canadian Transportation Agency, based on comparable traffic.

To further improve this remedy, the government is accepting, with some minor changes, the amendment put forward by Senator Plett concerning the direction of traffic for long-haul interswitching movements. These amendments would continue to ensure shippers who are located within 30 kilometres of an interchange or who are served by another railway are not excluded from accessing LHI if the railway or interchange is not in the reasonable direction of the movement of their traffic.

Taken as a whole, Bill C-49 advances critical objectives, including fair access for shippers to dispute resolution remedies, efficiency, transparency, long-term investment and safety. The resulting legislative package has been carefully crafted, reviewed and improved through the amendment process in both chambers.

While some Senate amendments have not been accepted, the Senate has fulfilled its role. The Senate's due diligence and hard work has helped to improve the legislation in a complementary fashion.

I now urge senators to concur with this message in relation to Bill C-49, a decision that falls to senators' individual and collective judgment. Allow me to note the Senate's excellent record in this Parliament of finding balance in dealing with the elected chamber, particularly in its dialogue with the other place through the messaging process.

Honourable senators, we have been thorough and we have been heard in the other place. Let me conclude by asking that we finish this important work so that Canada's farmers can know that the crops they are planting this spring will, in time, find their way to market without the delay and uncertainty that would be generated through disagreement between the two chambers of this Parliament.

I would again ask that all senators give attention to this message, pass it within a reasonable time frame and I thank all senators again for their work on Bill C-49 and for their attention to the deliberations on this message.

[*Translation*]

Hon. Raymonde Gagné: Honourable senators, I would like to share my thoughts about the message that we received from the other place and about some of the amendments that were rejected.

A lot of fuss has been made about the large number of amendments that our Standing Senate Committee on Transport and Communications proposed and about the intransigence of Minister Marc Garneau, who stated numerous times that he did not want to see any amendments.

Of course, the reality is not as black and white. Many amendments were part of the same proposal. For example, I proposed five amendments that addressed two specific issues, which is why I would prefer if they were referred to as my "two amendments."

Despite his original position, in the end, the minister approved some amendments and changed others. The exchange that took place between the two chambers is to be commended. We can say that Bill C-49 is better today than it was when the committee began studying it.

However, I want to talk about some of the amendments proposed by our committee that were rejected by the other place, particularly because they were not debated in the Senate at second or third reading.

• (1820)

Of the two amendments I proposed and that our committee adopted, the first related to protecting the privacy of railway employees. I worked on that amendment with the Honourable Senator Pratte, who shared a number of my concerns.

Bill C-49 includes measures to improve rail safety, and it is well-intended. For one thing, it mandates the installation of locomotive voice and video recorders. Anytime an incident or accident occurs that must be reported to the Transportation Safety Board, rail companies can access those recordings to see and hear what happened inside the locomotive. In that specific context, invasion of workers' privacy seems justifiable.

[*English*]

Bill C-49, however, goes further. It does not only give rail companies access to audit and video recordings related to an incident or accident but also to randomly selected recordings that are not linked to any incident or accident.

Witnesses were unable to justify why this additional access was necessary. My amendment thus sought to remove the access to these random recordings. The real effect of granting such broad access to the rail companies is to tell rail workers that they are being watched at all times, even when there are no incidents to report.

[*Translation*]

I thought then as I do now that, if the goal is to improve rail companies' practices and make them safer, it is perfectly reasonable to limit access to recordings related to incidents and accidents. That should be all the material rail companies need to improve their practices.

In its message, the House of Commons rejected that argument. The problem is that we will never know if that additional invasion of workers' privacy was justified.

We can expect rail companies to improve their safety practices, but will any improvements be due to reviews of recordings related to incidents and accidents, as I believe should be the case, or to random recordings?

We will never know. It will be extremely difficult to backtrack and do a better job of defending privacy rights. This issue is especially thorny because, as we heard from rail company representatives and the President of the Transportation Safety Board, rail companies have often taken an approach based on discipline rather than prevention.

[*English*]

We can thus expect a decrease in rail incidents and accidents. Will this be due to the study of footage linked to incidents or accidents, or of randomly selected footage that is not linked to any incident? We can logically assume that it is because of the former, but we will never actually know and will, thus, find it very hard to scale back the surveillance and better protect workers' privacy rights.

[*Translation*]

To be perfectly frank and transparent, it's unclear whether this provision, which my amendment sought to delete, would be ruled unconstitutional by the courts. I wouldn't go so far as to say that there is an unjustified Charter violation. But it was my responsibility, as a senator, to try to tilt the balance more towards privacy. It's disappointing that my effort was unsuccessful.

The second amendment I proposed was to maintain the right of third parties, especially consumer protection groups, to file a complaint with the Canadian Transportation Agency about any violations of passengers' Charter rights. The existing law allows third parties to file complaints in relation to air transportation. Last January, after Bill C-49 was passed by the other place, the Supreme Court even recognized the importance of complaints filed by public interest groups.

In *Delta Air Lines Inc. v. Lukács*, the Supreme Court ruled that it was unreasonable for the Canadian Transportation Agency to reject a complaint solely because the plaintiff had not been personally affected. The court felt that such an interpretation was contrary to the scheme of the act, since Parliament saw fit to grant the agency broad remedial authority. The court added that it would be unreasonable to interpret the agency's discretion in a manner that would preclude it from ever hearing a complaint from a public interest group.

Yet if Bill C-49 is passed as drafted, Parliament would be altering the remedial scheme of the act, the very scheme that the Supreme Court recognized and sought to protect in its recent *Delta Air Lines Inc.* ruling. This limitation is also contrary to the spirit of the bill itself, since its stated goal is to strengthen, not weaken, the air passenger rights protection regime.

At the end of the day, it's the passengers, especially those most vulnerable, who will be penalized by such a restrictive approach, given that complaints filed by consumer advocacy groups have led to major and historic advances for the benefit of the travelling public. While the bill expands and clarifies the scope of passengers' rights, sections 17 and 18 simultaneously limit the exercise of those rights.

Once again, I don't think the courts will be in a position to declare this new limitation inoperative. In the *Delta Air Lines Inc.* case, the Supreme Court found that the Transportation Agency had misinterpreted its discretionary power to hear from third parties. With Bill C-49, the government is simply leaving very little to chance as regards the role of public interest groups in the enforcement of a potential air passenger bill of rights. There will be no room for such groups there. Thus, no one is breaking the law, but the spirit of a law which was meant to be remedial is being distorted.

As a senator, I felt it was important to remove this new unjustified limitation from the bill. We must be especially vigilant when the most vulnerable groups of people risk being affected by new legislation. The other place also expressed its disagreement with that amendment.

The House of Commons also opposed another amendment, the Honourable Senator Cormier's amendment, which was very simple. It stated that when the Transportation Agency begins its consultations to develop, by regulation, the air passenger bill of rights, it must also address the airlines' linguistic obligations. The amendment did not create any new linguistic obligations. It left it up to the agency to examine and address the issue. The amendment was simply intended to ensure that the question of official languages was not forgotten, as is unfortunately too often the case.

Honourable colleagues, this chamber has a clear responsibility to protect our official language communities. Senator Cormier's amendment, which the other place rejected, fully reflected the role that senators and our chamber must play.

It is therefore with some confusion that I read the message we received with Bill C-49. There is no question that the approved amendments improved the bill.

[*English*]

The Honourable Senator Don Plett's amendment on interswitching was a necessary one for the agricultural industry, and Senator Diane Griffin's amendment on soybeans will support a growing industry in Manitoba and elsewhere.

[*Translation*]

The other place listened to reason on some matters of public policy and maintained its position on others. It rejected every amendment that had anything to do with protecting the constitutional rights of minorities and more vulnerable segments of the population.

[*English*]

Honourable colleagues, I think it is time to adopt Bill C-49 as there is a certain urgency to some of its aspects. As well, I don't think that by refusing certain amendments, including my own, the other place has proposed a bill that is clearly unconstitutional or that unduly harms one region or minority. However, I do want to reiterate my deception regarding the response received on the amendments that were proposed by the Senate, and that were tabled and adopted specifically within the purview of our complementary role.

• (1830)

Hon. Diane F. Griffin: I would like to, with leave, revert to ask questions of Senator Peter Harder. After his speech, I thought Senator Gagné was going to ask questions rather than continue the debate.

The Hon. the Speaker: Is leave granted, honourable senators?

Some Hon. Senators: Agreed.

An Hon. Senator: No.

The Hon. the Speaker: Did I hear a no? I heard a no. Sorry, Senator Griffin.

Hon. Pamela Wallin: Honourable senators, I would like to add my voice to the mounting concerns of senators regarding the message sent by the House of Commons to the chamber last week regarding Senate amendments to Bill C-49.

Senators made common sense amendments to the government's bill to amend the Transportation Act. We had a long list, but we put water in our wine. Unfortunately, the government, it seems, is not so open-minded.

My main concern, as I've spoken about many times, are the provisions regarding grain transportation and how the delay has made a bad situation worse for grain farmers across Western Canada because of the unpredictability, if nothing else. Farmers can't get their grain to market and this is, of course, due in part to the government's action to include grain transportation provisions in an omnibus-type bill with other unrelated matters in this bill.

It has resulted in a potential repeat of 2013-14, a crisis where $5 billion was ripped out of the western Canadian economy. The fear of a repeat came into sharp relief for many last week when a fertilizer company, Nutrien, said they were temporarily laying off up to 1,300 workers at two potash mines. They laid blame on the transportation backlog in the rail system and the possibility of a strike at CP Rail.

Saskatchewan Premier Scott Moe echoed the frustration of those who have experienced two rail backlogs in four years, meanwhile dealing with the potential of no Trans Mountain pipeline expansion.

As honourable senators can imagine, people in my province are anxious and desperately want the federal government to act on these issues — and the government has failed them. It had the option to work through an order-in-council. The government had its chance to extend the sunset clause in a bill passed in the last Parliament. The Fair Rail for Grain Farmers Act had a built-in clause allowing ministers to issue an order-in-council and extend the provisions for a year.

Now, I know the new government, when it was elected, extended it once, but in the face of another potential crisis, they opted instead to introduce this omnibus-type transportation bill and ignored the farmers' pleas to extend the provisions.

In reality, farmers needed the government to act months ago. We are now faced with the fact that the government has rejected a number of commonsense amendments, although accepting some that will be helpful.

I won't dwell on the amendments regarding the air passenger bill of rights. That's been dealt with. But it does concern me that this bill leaves decisions about these issues much to the discretion of the minister. The constitutional role we bear as senators gives us an opportunity and the longevity and continuity, regardless of changes in government, to bring long-term views to the table.

This is a critical aspect of our parliamentary democracy and what I see as a bit of an erosion of our independent organizations, such as the CTA, has taken place over time. It's not limited to this government, but it is a shame that it's happening and we don't want to see Canadians lose trust in these organizations or to see them politicized.

These concerns are important ones, but I want to reiterate that my core concern is about the grain farmers in my province. As I've said many times in this chamber, farmers need the government's action to help get their grain to market. It doesn't work any other way.

I strongly disagree with how this bill has been dealt with. It's disappointing to hear ministers accuse senators of taking too long to review and debate the bill when it was their government and decision that presented it in an omnibus form that made it necessary to amend and that that job took a little bit longer than perhaps they liked.

Our job in the Senate is sober second thought. It is our responsibility to review legislation before us, and when that legislation comes in a complicated bill, it will take longer.

With the list of rejected amendments before us and while importantly retaining our constitutional rights as a complementary body, I believe we will likely end up deferring to the government to make policy, even though I believe it's bad policy and a flawed bill. But it is critical for action for the sake of our farmers.

I ask the government to get on with the job of supporting Western farmers and please get the grain moving.

Thank you.

Hon. André Pratte: Honourable senators, alongside the medically assisted dying bill, Bill C-14, this vote will be the most difficult I've been faced with since being appointed to this place two years ago. "What?" you say. "For a transportation bill?" Well, let me explain.

As you know, Bill C-49 is a bill with many different parts. Each part is extremely important for a group of Canadians who are anxious for us to pass this bill.

The Senate has played its role. It studied the bill carefully, submitting some 20 amendments. The minister was adamant that he would entertain no amendment. It is therefore a pleasant surprise that the government has finally accepted several changes.

On the surface of it, all the elements are in place for the Senate, a complementary, appointed chamber, to vote for the bill as amended by the other place. We made our point. We've been heard, in part. Unless it is a matter of fundamental rights or of a major regional interest, on what basis should we insist on our amendments?

Precisely, Bill C-49 does raise an issue of rights protection: the privacy rights of locomotive engineers, the infringement of which is contrary to the values contained in our Charter.

As you know, and as Senator Gagné has already explained, Bill C-49 provides that video and sound recorders would be installed in all locomotives and that the recordings will be available to the Transportation Safety Board, for its investigation after a major accident; to Transport Canada and railway companies after an incident or an accident that is reportable to the TSB, and I note that there are approximately 1,200 of these each year, the vast majority involving CN and CP trains; and the department and railway companies following a random sampling method to be prescribed by regulation.

As a consequence of Bill C-49, train engineers will have cameras filming their every move and recording their every word for hours on end. Hundreds of recording extracts will be available for railway and Transport Canada officials to watch. It is true that employers will be prohibited from using the recordings for disciplinary purposes, but we would be naïve to think that they could not lead to harassment or embarrassment.

There is no doubt that LVVRs constitute a major intrusion upon the engineer's privacy. A person's privacy expectations are obviously lessened while he or she is at work, but that does not mean that they should be non-existent. For instance, in *R. v. Cole* in 2012, the Supreme Court ruled that Canadians may reasonably expect privacy in the information contained on workplace computers. As the privacy commissioner writes:

> Employers have legitimate requirements for personal information about their employees. . . . So sometimes employers have to delve into private matters. But they can keep those instances to a minimum, and limit the impact on personal privacy. The possibility that an individual employee might do something harmful doesn't justify treating all employees as suspects.

• (1840)

Concerned with the privacy implications of the installation of LVVRs, some senators moved to amend the bill so that the recordings would have been accessible only to the TSB after an accident. Railway companies would never have had access to the recordings. Other senators, myself included, were sensitive to the government's and railways' arguments that more was needed in order to allow railways to learn from the hundreds of incidents that occur on their tracks each year. Consequently, Senator Gagné proposed a compromise, an amendment which would have given railway companies access to the recordings of the incidents that are reportable to the TSB, which, as I said, number approximately 1,200 events each year. For each of CN and CP, this means they could have watched, studied and learned from between 500 and 600 recordings each year. That is a significant number to work with to improve safety.

The only part concerning LVVRs that would be removed from the bill was the random sampling system. This system appeared to us to be most problematic, as Senator Gagné explained. We believe that Senator Gagné's approach was a reasonable, progressive alternative that attained a fair balance between the government's and the railways' safety concerns and the workers' privacy rights. Unfortunately, the government rejected this proposal out of hand.

So what are we to do? Are we to vote in favour of the other place's message, knowing that it confirms a provision of Bill C-49 that seriously and disproportionately intrudes on the privacy of Canadian workers? Or are we to insist on our amendment, a choice which would appear to be consistent with the Senate's role as protector of Canadians' rights?

When it is appropriate for the Senate to insist is one of the most difficult questions the Red Chamber has to deal with during its century and a half history. Senator Gold recently wrote the following on the subject:

> The Senate has a responsibility to ensure that proposed legislation respects the Constitution and its values. But unless a bill so obviously and unambiguously violates the Constitution, the Senate should not substitute itself for our courts. Where the government's policy choices are reasonable and based upon credible evidence, where its constitutional position is supported by impartial and distinguished academic analysis, and where the government received an electoral mandate to enact the bill in question, the Senate ought to defer to the policy decisions of the elected House of Commons.

In the case of LVVRs, the government has not made the case that the safety situation of the Canadian railway system is so serious that it justifies such an egregious infringement on workers' privacy. From the constitutional standpoint, the government has never even attempted to make its case. It has not published a Charter-compliant statement nor put forward the opinion of constitutional law experts to support its point of view.

There is no safety crisis affecting the Canadian railway system. The number of accidents has not increased over the last 10 years, nor has the number of fatalities. Each year, between 95 and 100 per cent of fatalities are caused by trespassing or crossing accidents, events that happen outside the train and have little to do with what goes on inside the cab.

Of all main-track derailments during an average year, 20 per cent are due to human error, but 70 per cent are track or equipment related.

The 2012 VIA Rail derailment, near Burlington, which killed three crew members, is often quoted in support of the need for LVVRs. Fortunately, fatal accidents such as these are rare. The Lac-Mégantic tragedy is also frequently mentioned, but it shouldn't be, because the presence of LVVRs would likely have provided no useful information to investigators in this particular case.

The safety situation of Canada's railway system would have justified a gradual approach. Instead, the government chose a solution that infringes on workers' privacy to the highest degree possible.

[*Translation*]

Case law also suggests an incremental, moderate, fact-based approach. Unfortunately, there is no key Supreme Court decision on video surveillance in the workplace to settle the issue.

However, we do have decisions handed down by Quebec courts, the Privacy Commissioner of Canada, and the Canadian Human Rights Tribunal. These cases provide a few cogent principles, particularly the 2005 *Vigi Santé* ruling by the Quebec Court of Appeal, which states:

> In general, such an intrusion [in the privacy of an employee] is permitted when it meets the following criteria: 1) the employer uses this means to attain a legitimate and important objective; 2) the measure is rationally linked to the intended objective; 3) there exists no other reasonable means of attaining the objective; the intrusion or incursion being the least invasive possible.

There is no doubt that video recorders on locomotives satisfy the first two criteria. However, in my opinion, they do not meet the third in that the government has chosen the means that is most intrusive for the privacy of train engineers rather than opting for the least invasive means possible.

Nevertheless, it seems that it is tempting to sacrifice workers' privacy rights on the altar of objectives that at first glance are more important. Recorders in locomotives are not an isolated case. In the cannabis legalization debate, some industries asked for authorization to implement mandatory alcohol and drug testing. This is another violation of workers' privacy rights justified by hypothetical scenarios rather than specific facts.

[*English*]

So as we study the message received from the other place, I am faced with a dilemma. I am convinced that Bill C-49 seriously infringes upon railway workers' privacy and that neither the government nor the railways has provided sufficient justification for such an infringement. At the same time, I believe that the Senate, as a complementary appointed chamber, should only insist on its amendments in the most exceptional of circumstances.

Does this message qualify as one of these circumstances? I do not think so.

Certainly, if two years ago the Senate decided not to insist on its amendment during the debate on Bill C-14, the medically assisted dying bill, then the discussion over LVVRs, as important as it is, does not rise to the level required, whatever that level is.

Fortunately, locomotive engineers are not without recourse and resources. The unions that represent them will defend their rights. They have the means to challenge the new law and, in the end, the courts will decide whether this new surveillance regime is respectful of the Charter.

Honourable senators, considering all this, I am opposed to Bill C-49 in its current form. However, I do not believe that in the present circumstances the Senate should insist on its amendment. Therefore, on the message from the other place, I will vote yea, but I will do so with a heavy heart and with a gnawing question in mind: To what end are we here, if not to protect the rights of Canadians?

[*Translation*]

Hon. Dennis Dawson: Dear colleagues, I did not intend to speak this evening. However, since I spoke to this bill the first time around and called it balanced, people asked me earlier whether it is more rigorous now than it was before. I have to say that the bill has indeed been improved, since I believe that the amendments proposed in both chambers made this a better bill.

I understand the hesitation of some of my colleagues who raised legitimate concerns in committee, but I am convinced that this bill has been improved.

Like my colleagues Senators Eggleton and Joyal and one more senator from the other side, I am one of the few senators in this chamber who has had the pleasure of sitting in both chambers of Parliament. I am among those who respect the fact that the Senate can amend bills, and I have never had any qualms about asking for amendments or voting in favour of them in the past, but at the end of the day, the legislative process of the elected chamber takes precedence.

If this was a fundamental issue, I would vote against this measure a second time, but I do not think that it is, since we are talking about a bill on transportation. I therefore do not believe that this bill warrants that. I will therefore support the message from the government, not because the bill is perfect — it was not the first time I voted in favour of it — but because it has come back to us and now includes an improved process.

• (1850)

I want to thank the members on both sides of the House. I want to thank the leader. I want to thank the minister, who may have started off somewhat intransigent, for his understanding. When I was little, I used to listen to a song in Quebec that went:

> You bring someone into the world.
> Maybe you should listen to them.

I can't remember who that was. Maybe one of my arts-minded friends in the Senate can tell me.

Mr. Trudeau brought a new Senate into the world. This is the first bill for which a majority of new senators are proposing amendments, and it would have been an insult to the Prime Minister and to this chamber not to acknowledge the importance of listening to what he brought into the world. It will not be the last time we will want to be heard.

I had some reservations about senators being excluded from the Liberal caucus. I was very unhappy about it — I still am — but in the long term, I want this new process and the new Senate to succeed.

I hope any senators who may be disappointed that some amendments were not accepted understand that this is an ongoing process and that we will get more and more opportunities to make use of the Senate's new independence to improve bills.

[*English*]

We have all talked about the upper and lower houses. I am one of the rare ones — Senator Eggleton, my friend Senator Joyal, and I think there's a senator on the other side — who have sat in both houses. I'm sorry, Senator Ringuette; you are now so far away from me that I sometimes forget you were also in the other place. Those of us who have sat in both houses know that this might be called the upper house, but as a representative in an elected chamber, the other place deserves to be respected. They have to face the electorate.

[*Translation*]

Everything in moderation.

[*English*]

Hon. Donald Neil Plett: Would the honourable senator take a question?

Senator Dawson: Certainly, Senator Plett.

Senator Plett: I didn't dare ask for leave to ask Senator Harder a question because it was obvious that wasn't going to be given. I also should have asked him a question, but I will now ask you a question.

You did talk about having been excluded from the other caucus, but I also heard you say that it would be contemptuous to vote against this.

Would you not agree, Senator Dawson, that we've been clearly told in this chamber by the Leader of the Government in the Senate, both verbally and in writing, that we should always support a government that has fulfilled its election promises, and we have no right here to vote against something they have committed to in an election?

On pages 39 and 75 of the Liberals' election platform, they clearly said that they would not promote these omnibus bills that the Conservative government was known for. Here we have one of the largest omnibus bills that I can certainly remember — 13 acts of Parliament are being affected by this omnibus bill. Isn't it a little contemptuous for the government to ask us to vote for something that modifies or changes 13 acts of Parliament? Would you not consider that going against their election promise?

Senator Dawson: Well, you've been here long enough, Senator Plett, to know that when we talk about omnibus bills, we try to talk about bills that deal with different issues at the same time. I'm certainly not a big fan of omnibus bills; I've always opposed them.

Yes, this bill does affect a lot of laws and legislation, but all of the affected legislation relates to transport. If you think we are having trouble getting a bill through on transport, imagine if we divided this measure into 12 different bills. And you know there is an urgency on this bill. The government was wrong in saying there was urgency at Christmas. You shouldn't have false urgencies because when Christmas came and went, what happened? Well, we had a new urgency in January, February and March.

We're in May, but the farmers are telling us — I've certainly received more correspondence in the last two weeks telling me, "All right, you've had your chance to talk about this issue." I think the Senate Transport Committee and the Senate has improved this bill, but, please, the Western grain producers want this bill to be passed. I think we should pass it.

Senator Plett: Would you accept another question, Senator Dawson?

Senator Dawson: Certainly, Senator Plett.

Senator Plett: You didn't answer the last one, but I'll ask another one anyway. I certainly agree with much of what you have said, Senator Dawson, and certainly tomorrow, when I speak on this bill, without wanting to pre-empt what I'm going to say, I'm going to find myself in the same boat as Senator Pratte where I'm going to condemn the bill and then at the end I'm going to cave in and say that I won't deny voting on this bill and probably won't vote against it because I'm, along with Senator Pratte, probably somewhat supportive of that.

Some Hon. Senators: Hear, hear!

Senator Plett: Thank you very much. Remember, we don't whip our people, and I'm only one senator over here.

Senator Lankin: It was good up until that point, Senator Plett.

Senator Plett: I might get the chance, if the sponsor of the bill decides to speak on this as well, to ask him this question. So I'll give him a heads-up on this: How do you feel about the Leader of the Government in the Senate telling us how we should vote and how we shouldn't vote and now is promoting an amended bill?

The government sponsor of this bill, and indeed part of the leadership, opposed every single amendment at committee. Is there some consistency there, Senator Dawson, or would you also not want to comment on that?

Senator Dawson: You should never give me an opportunity to comment on anything, Senator Plett; you must know by now that I will take the opportunity.

First of all, don't get me wrong about Senator Harder. I don't agree blindly with Senator Harder on most things, but I do believe that, on this legislation, he indicated clearly that some improvements could be made and he encouraged it, and I think it helped the process along.

That being said, first of all, I'm quite sure that at the minister's office, where they are listening to you, they are happy to know, even though you're only one senator, that you will not be voting against this bill. Being probably one of the rare 10 people here who is really not whipped, I see my supposed whip beside me who has not whipped me once in the last year, I hope this bill passes. I'm happy to know you're supporting the measure.

The process is improving. I'm telling colleagues, "Let it improve; let's go forward." Canadians are looking to us. This experiment has to succeed. We're going to have a better Senate with it.

(On motion of Senator Martin, debate adjourned.)

THE SENATE

MOTION TO AFFECT QUESTION PERIOD ON MAY 8, 2018, ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of May 3, 2018, moved:

> That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, May 8, 2018, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;
>
> That, if a standing vote would conflict with the holding of Question Period at 3:30 p.m. on that day, the vote be postponed until immediately after the conclusion of Question Period;

That, if the bells are ringing for a vote at 3:30 p.m. on that day, they be interrupted for Question Period at that time, and resume thereafter for the balance of any time remaining; and

That, if the Senate concludes its business before 3:30 p.m. on that day, the sitting be suspended until that time for the purpose of holding Question Period.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

(At 6:59 p.m., the Senate was continued until tomorrow at 2 p.m.)

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